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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CARL E. BLOCK,

Defendant and Appellant.

D074624

(Super. Ct. No. SCS297524,  
SCS298685)

APPEAL from a judgment of the Superior Court of San Diego County, Francis M. Devaney, Judge. Affirmed as modified with directions.

Christine M. Aros, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel, and Craig H. Russell, Deputy Attorneys General, for Plaintiff and Respondent.

This appeal follows convictions in two separate cases from San Diego Superior Court. In case No. SCS297524 Carl Block was convicted of vandalism involving a loss

in excess of \$400. He was sentenced to two years in county jail. This appeal does not challenge the conviction or sentence from that case. Thus, we will not discuss it further in this opinion.

In case No. SCS298685, a jury convicted Block of five misdemeanors. Block was sentenced to a total term of 180 days. Block contends concurrent sentences on two of the offenses, namely counts 3 and 5 should have been stayed under Penal Code<sup>1</sup> section 654. The People contend the issue is moot since Block was given custody credits well in excess of the sentences imposed for the two counts. Assuming we do not find the issue moot, the People agree the sentences should be stayed under section 654. We will order the judgment modified to stay the sentences on counts 3 and 5 and otherwise affirm the judgment.

### PROCEDURAL BACKGROUND

In case No. SCS298685, a jury convicted Block of attempted petty theft (§§ 664, 484; count 1) as a lesser offense of attempted robbery. The jury also convicted Block of attempted unlawful taking of a vehicle (§ 664 and Veh. Code § 10851; count 2); attempted petty theft (§§ 664, 484; counts 3 and 5); tampering with a vehicle (Veh. Code § 10852; count 4); and trespass (§ 602, subd. (k); count 6). Block was sentenced to a

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

total of 180 days in jail. On counts 3 and 5 the court imposed concurrent terms of 90 days. The issue of a possible stay under section 654 was not raised in the trial court.<sup>2</sup>

### STATEMENT OF FACTS

Given the limited issue on this appeal, we will adopt the People's summary of the facts for purposes of providing context for the discussion which follows.

Pick Your Part is an automotive dismantling and recycling business in Chula Vista. Pick Your Part uses a security service to monitor thermal imaging cameras at night as a theft prevention measure. A manager employed by Pick Your Part received a call from the security service around midnight about movement in the car lot. The manager went to the lot to meet police and entered the lot with a softball bat. He heard the sound of a saw as he walked through the lot.

The manager encountered appellant under a Pontiac Aztek and asked what he was doing. Appellant got out from under the vehicle and said that he owned the business and lived there. The manager told appellant he was not the owner and that police were on the way. Appellant then demanded the manager's keys and wallet. Appellant lunged towards the manager who hit appellant with the bat between his shoulder and elbow. Appellant yelled that the manager broke his arm and ran away.

The manager tried to follow appellant but could not keep up because of recent foot surgery. The manager then heard appellant start a vehicle. The manager saw appellant

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<sup>2</sup> Failure to raise section 654 in the trial court does not create a forfeiture. A sentence in violation of that section is unauthorized, *People v. Hester* (2000) 22 Cal.4th 290, 295.

trying to drive an Acura vehicle but there was a hole in the transmission and the car was inoperable. Appellant then entered a Ford F-150 pickup truck but, finding no keys in the vehicle, he fled the area. The manager walked back to the area where he first saw appellant and recovered appellant's backpack. Police later found saw blades in the backpack. The manager also found a saw still on the pipe leading to the catalytic converter on the Pontiac Aztek. Catalytic converters contain precious metals including rhodium, platinum and gold.

Police officers arrived and took the manager to a nearby location where they had apprehended a suspect. The manager identified appellant as the perpetrator.

## DISCUSSION

### 1. Mootness

The People contend the issue regarding section 654 is moot. Given the short sentences involved and the substantial custody credits awarded, they contend we cannot provide meaningful relief. We do not pause long with this contention. The sentence imposed is concededly unauthorized. If the passage of time renders such sentences moot, section 654 issues regarding minor offenses will evade review. (*People v. Williams* (1999) 77 Cal.App.4th 436, 441, fn. 2.) We will address the merits of Block's contention.

### 2. Section 654

Section 654 prohibits multiple punishments for the same physical act. Here the parties agree that counts 2 and 3 involve the same physical act of attempting to take a single vehicle. Counts 4 and 5 also involve a single physical act in attempting to remove

parts from a vehicle. In both instances Block acted with a single intent or objective, i.e., to steal the vehicle or to steal a part from a vehicle.

Where a defendant engages in a single physical act or course of conduct with a single intent or objective, section 654 prohibits multiple punishments for separately pleaded offenses from such conduct. (*People v. Harrison* (1989) 48 Cal.3d 321, 335; *People v. Latimer* (1993) 5 Cal.4th 1203, 1208; *People v. Siko* (1988) 45 Cal.3d 820, 822.)

The parties correctly agree that section 654 bars separate punishment in counts 3 and 5. The trial court is required to stay the sentences on counts 3 and 5 pending completion of the sentences for counts 2 and 4, respectively. We will remand the case to the trial court to make the necessary corrections.

## DISPOSITION

The case is remanded to the trial court with directions to stay the sentences for counts 3 and 5 pursuant to section 654 and to amend the judgment accordingly. In all other respects the judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

DATO, J.